

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

J. T. DENT)	
Claimant)	
VS.)	
)	
U.S.D. #500)	Docket No. 230,657
Respondent)	
AND)	
)	
MANAGEMENT SERVICES, INC.)	
Insurance Carrier)	

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated May 20, 1998, wherein the Administrative Law Judge granted claimant temporary total disability compensation, and medical treatment through the authorized treating physician, Dr. Lowry Jones.

ISSUES

Does claimant's need for a total hip replacement result from the accidental injury sustained on January 8, 1998, or is it the result of a long-standing preexisting condition?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

It is admitted by Respondent that claimant suffered accidental injury on January 8, 1998, when he fell down a flight of stairs, rendering him unconscious and causing injury to his low back, neck, and head. Claimant also contends that he aggravated the degenerative arthritis condition in his right hip, necessitating an earlier total hip replacement than had originally been anticipated.

Respondent contends claimant's need for a total hip replacement stems from a long-standing degenerative problem suffered shortly after claimant sustained a fall in 1985. Medical reports from as early as 1986 indicate claimant suffered from avascular necrosis

of the right hip. Medical reports from orthopedic surgeons as early as 1994 recommended that the hip replacement be performed. Claimant expressed a reluctance to undergo this procedure, indicating that he wanted to continue working his janitorial job until he turned 55, at which time he could retire and would be willing to undergo the replacement procedure. Dr. Adam I. Harris, a board eligible orthopedic surgeon, recommended in his April 21, 1997, report that the total hip replacement would be an excellent solution for claimant's right hip problems, but the report also discusses claimant's reluctance to undergo the procedure until absolutely necessary.

Additional medical records from orthopedic surgeon Dr. Daniel M. Downs confirmed Dr. Harris's diagnosis that claimant suffered from a long-standing preexisting problem in his right hip including degenerative arthritis and avascular necrosis. However, Dr. Downs' medical report of January 22, 1998, indicates that, while claimant's fall of January 8, 1998, is not the cause of his hip problems, it most certainly is an aggravating factor. He acknowledged that claimant would be unable to return to heavy manual labor, or even medium heavy manual labor, as a custodian with the hip in its current condition.

Claimant was referred to Dr. Lowry Jones, an orthopedic surgeon, by respondent's attorney on April 15, 1998. Dr. Jones found claimant to have a preexisting arthritic condition in his right hip since as early as 1986, but that claimant had tolerated his job, and continued working as a custodian until the fall in January 1998. Dr. Jones' history indicated that claimant planned to work until he was 55 years old at which time he would undergo the hip replacement after retirement.

While Dr. Jones agreed that the old records indicate the 1985 incident was probably what led to his current hip problem, there was evidence that claimant's pain had significantly increased after the fall. Dr. Jones opined that the January 8, 1998, incident made claimant "acutely worse." While it has not changed the recommendation for treatment, he notes that the recommendation for the total hip replacement at this time is on the basis of claimant's increased pain, and claimant's option of putting the surgery off for several more years is not likely.

The Appeals Board has been asked to decide in the past whether an accelerated need for surgery constitutes a work-related injury under the Workers' Compensation Act. The Appeals Board has answered this question in the affirmative in the case of Cordonnier v. Sheehan Pipeline, Docket No. 238,922 (May 1998), wherein the Appeals Board found that a recommended ACL surgery to claimant's knee would be compensable if the need for this surgery was accelerated by the work-related accident. See also Woodward v. Beech Aircraft Corporation, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

In this instance, the medical evidence is uncontradicted that, while claimant did have a preexisting arthritic hip condition, and had been diagnosed with avascular necrosis, both the need and the recommendation for surgery were accelerated as a result of the fall of January 8, 1998.

Therefore, the Appeals Board finds, for the purpose of preliminary hearing, that claimant's need for surgery is compensable under the Workers' Compensation Act.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated May 20, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

c: John H. Thompson, Kansas City, MO
Frederick J. Greenbaum, Kansas City, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director